

§1137.2(b)(2). A full explanation of the methods, procedures and data used to determine “cash-outlays” should be supplied.

(2) *Demand*. Evidence supporting existence of a “demand” for the proposed service as that term is defined in §1137.2(b)(3).

(3) *Market dominance*. If the proposal involves a new or increased charge for a distinct service, evidence prepared in accordance with the guidelines established in Ex Parte No. 320 (Sub-No. 2), 365 ICC 118 should be supplied. However, if such data has been previously submitted in the same proceeding, a notation to that effect will suffice.

(4) *Revenues*. The annualized dollars of revenue to be obtained from the rate or charge associated with providing the distinct rail service.

(5) *Outputs*. The annualized number of service outputs associated with the rate or charge per service unit. For example, if the proposed rate is stated in cents per hundredweight, per car switched, or per stop, then the number of service outputs should be expressed as x number of hundredweight, cars switched, or stops made.

(6) *Ratios*. The revenue-to-cost ratio (percentage) for the distinct rail service, based on the revenues to be obtained, and the carrier’s “cash-outlays.”

(7) *Effect*. A statement as to how the proposed rate on the distinct rail service will encourage competition; promote increased reinvestment by the railroad; or encourage and facilitate increased non-railroad investment in the production of rail services.

(8) *Alternative data*. The submission of the above evidence, paragraphs (h)(1) through (7) of this section, represents data which the Board believes would provide a basis for meaningful analysis of the lawfulness of such rates. However, in lieu thereof or in addition thereto, respondents may justify their proposal on the basis of other relevant evidence or cost levels. A full explanation of the methods and procedures used shall be provided.

(i) *Reporting requirements*. For the 6-month period beginning February 5, 1977, all common carriers by rail, subject to 49 U.S.C. 11145; shall submit information showing those distinct rail

service rates published in accordance with 49 U.S.C. 10728, showing actual or estimated revenues derived therefrom during the 6-month period. In addition, these reports, which shall be filed with the Board by July 30, 1977, shall state whether the rates accomplished their intended purpose, and if not whether they intend any change in the level of charge or other change.

[42 FR 9024, Feb. 14, 1977; 42 FR 36265, July 14, 1977, as amended at 42 FR 62139, Dec. 9, 1977. Redesignated and amended at 47 FR 49576, Nov. 1, 1982; 48 FR 44827, Sept. 30, 1983; 50 FR 37534, Sept. 16, 1985]

PART 1139—PROCEDURES IN MOTOR CARRIER REVENUE PROCEEDINGS

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AUTHORITY: 49 U.S.C. 721, 13703.

Subpart A—Common Carriers of General Commodities

SOURCE: 47 FR 49577, Nov. 1, 1982, unless otherwise noted.

§1139.1 Application.

(a) Upon the filing by the tariff publishing agencies named hereinafter on behalf of their motor common carrier members, or by such other agencies as the Board may by order otherwise designate, of agency tariff schedules which contain (1) proposed general increases in rates or charges on general freight where such proposal would result in an increase of \$1 million or more in the annual operating revenues on the tariff affected by the proposal, or (2) a proposed general adjustment with the objective of restructuring the rates on a wide range of traffic, involving both increases and reductions in rates and charges, where such proposal would result in a net increase of \$1 million or more in annual operating revenues, the motor common carriers of general freight on whose behalf such schedules are filed shall, concurrently with the filing of those tariff schedules, file and serve, as provided hereinafter, a verified statement presenting and comprising the entire evidential case which is relied upon to support the proposed general increase or rate restructuring. Carriers thus required to submit their evidence when they file their schedules are hereby notified that special permission to file those schedules shall be conditioned upon the publishing of an effective date at least 45 days later than the date of filing, to enable proper evaluation of the evidence presented. Data to be submitted in accordance with §§1139.2 through 1139.5 of this part represent the minimum data required to be filed and served, and in no way shall be considered as limiting the type of evidence that may be presented at the time of filing of the schedules. If a formal proceeding is instituted, the carriers are not precluded from updating the evidence submitted at the time of filing of the schedules to reflect the contemporary situation.

(b) The motor common carriers of general freight which are subject to the provisions of this section are those which are members of the following tariff publishing agencies:

Central and Southern Motor Freight Tariff Association, Inc.
 Central States Motor Freight Bureau, Inc.
 The Eastern Central Motor Carriers Association, Inc.

Middle Atlantic Conference
 Middlewest Motor Freight Bureau
 The New England Motor Rate Bureau, Inc.
 Pacific Inland Tariff Bureau, Inc.
 Rocky Mountain Motor Tariff Bureau, Inc.
 Southern Motor Carriers Rate Conference

(c) Upon the filing of tariff schedules other than those described hereinabove, the carriers or their tariff publishing agencies shall be required to comply with such procedures as the Board may direct in the event an investigation is instituted. In any proceeding involving a proposed rate restructuring which would produce additional net revenue of less than \$1 million the carriers will be required to submit only the data sought in §§1139.2 and 1139.3. Nothing stated in this part shall relieve the carriers of their burden of proof imposed under the Interstate Commerce Act.

§1139.2 Traffic study.

(a) The respondents shall submit a traffic study for the most current 12-month calendar year available, which shall be referred to as the "base-calendar year—actual." This year shall be the calendar year that has ended at least 7 months prior to the published effective date of the tariff schedules. If the effective date is less than 7 months following the end of the preceding calendar year, than the second preceding calendar year shall be considered at the "base-calendar year—actual." The study shall include a probability sampling of the actual traffic handled during identical time periods for each study carrier.

(b) The study carriers shall consist of those carriers subject to the requirements for allocation of expenses between line-haul and pickup and delivery services, as provided in Part 1207 of this chapter, Instructions 27 and 9002, which participate in one of the motor carrier industry's Continuous Traffic Studies, and which derive either \$1 million or more in annual operating revenues from this issue traffic or 1 percent or more of the total annual operating revenues of all carriers from the issue traffic. A list of such carriers and the appropriate revenue data shall be submitted to corroborate the selection of the study carriers. "Issue traffic" consists of those shipments on which the